FILED
United States Court of Appeals
Tenth Circuit

November 2, 2026

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MOSTAFA KAMEL MOSTAFA,

Plaintiff - Appellant,

v.

TODD BLANCHE, United States Attorney General, in his official capacity; KASHYAP PATEL, FBI Director, in his official capacity; WILLIAM K. MARSHAL, III, BOP Director, in his official capacity; DEANNA BAYSORE, in her official capacity; WILLIAM, ADX Nurse, in his individual capacity; TUTOILMUNDO, ADX H Unit Manager, Florence, in his official capacity; MACMILLAN, Facilities Department, in his official capacity; FOLLOWS, Manager Medical Dept. ADX; LOEWE, Officer, ADX, in his official capacity; NORJANO, Officer, ADX; CHOROSEVIC, ADX Occupational Therapist in his individual capacity; PARRY, Officer, ADX; AVERIT, ADX Officer, in his individual capacity; GARDUNO, Lieutenant, ADX, in his official capacity; HUDELSTON, Nurse, Medical , ADX; STERETT, Dr., Medical Dept. ADX, in his official capacity; ARMIJO, ADX Lieutenant, in his individual capacity; EDWARDS, ADX Officer, in his individual capacity,

Defendants - Appellees.

No. 25-1454

Appeal from the United States District Court
for the District of Colorado
(D.C. No. 1:20-CV-00694-PAB-MDB)

Paul Wolf, Law Office of Paul Wolf, Colorado Springs, Colorado, for Plaintiff – Appellant.

William Morrison, Assistant United States Attorney (Peter McNeilly, United States Attorney and Benjamin Gibson, Assistant United States Attorney, on the briefs), Office of the United States Attorney, District of Colorado, Denver, Colorado, for Defendants – Appellees.

Before **MATHESON**, **McHUGH**, and **FEDERICO**, Circuit Judges.

MATHESON, Circuit Judge.

Mostafa Kamel Mostafa is serving a life sentence for terrorism-related offenses at the federal Administrative Maximum Prison in Florence, Colorado ("ADX"). He is severely disabled with both arms amputated above the elbow and no vision in his left eye. Mr. Mostafa sued the Attorney General, FBI Director, Bureau of Prisons ("BOP") Director, and ADX officials for various federal constitutional and statutory violations. The district court dismissed or granted summary judgment to the Defendants on most of Mr. Mostafa's claims. He voluntarily dismissed the remainder with prejudice.

Mr. Mostafa's appeal mainly concerns his Eighth Amendment claim alleging deliberate indifference to his medical needs. The district court dismissed it for failure to state a claim under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). On appeal, he argues the district court should have

(1) evaluated his Eighth Amendment and other constitutional claims under the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 et seq.; (2) held that his medical indifference claim could be brought under *Bivens*; (3) granted leave to amend his complaint; and (4) reviewed his challenge to the cost of deposition transcripts.

Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I. BACKGROUND

A. *Factual History*

For our review of the claims that were dismissed for failure to state a claim, we "must accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff." *Waller v. City & County of Denver*, 932 F.3d 1277, 1282 (10th Cir. 2019) (quotations omitted). For the claims dismissed by summary judgment, we recount facts from the summary judgment record and view them in the light most favorable to Mr. Mostafa as the non-moving party. *See Henderson v. Glanz*, 813 F.3d 938, 951-52 (10th Cir. 2015).

In 2012, the United Kingdom extradited Mr. Mostafa to the United States. In 2014, he was convicted of "hostage taking, providing material support for terrorism, providing material support to al Qaeda, a designated foreign terrorist organization, and supplying goods and services to the Taliban." Aplt. App. at 52 (citation modified). The district court sentenced him to life in prison without parole. The BOP placed Mr. Mostafa at ADX.

Mr. Mostafa alleged the following about his conditions at ADX:[1]

Dental care – He lacks "an electric, prosethetic [sic] toothbrush," which "has caused [him] to lose many of his teeth due to infections." *Id.* at 73. The infections have "gone untreated or have been inadequately treated." *Id.* at 74. Also, Mr. Mostafa's food is frequently served in packets, which "he is only able to open . . . by using his stumps to hold the item and his teeth to rip it open." *Id.* at 73. Despite a note on his cell door stating he "need[s] help with food and all food provided should be taken out of plastics and placed on another container for safe easy eat[ing]," his "food was still delivered wrapped in plastic" and "the guards who deliver it do not open it." *Id.* at 88 (quotations omitted). ADX Officers Loewe and Norjano delivered "about 150 evening meals . . . wrapped in plastic." *Id.* When he "called out to the officers," they ignored him. *Id.* ADX officials True and Follows also ignored his requests for help. *Id.* As a result of infections and opening his food with his teeth, Mr. Mostafa "has lost all his lower back teeth, two of his top back teeth, and suffered severe abrasions to his front teeth and gums." *Id.* at 73.

Diet – Before arriving at ADX, Mr. Mostafa ate a special diet, mostly salad and tomatoes, to address some of his medical conditions. At ADX, "he has been denied this

[1] The relevant factual allegations are dispersed throughout Mr. Mostafa's complaint, which begins with an overview of his arrest, extradition, conviction, and confinement. He then provides specific factual allegations for each claim and also states that he incorporates all preceding paragraphs in later claims. As a result, his allegations for later claims, such as his Eighth Amendment Claim 8, present general summaries of prior detailed allegations.

medical diet, despite repeated and renewed requests." *Id.* at 87. He has requested "proper diet: salad, tomatoes." *Id.* (quotations omitted). His "blood pressure is now very high, his skin cracked and bleeding, and he is plagued with constipation, blood sugar fluctuations, and excessive sweating." *Id.* Also, because Mr. Mostafa's food is "delivered wrapped in plastic," he "has been unable to eat approximately 150 meals because of difficulties in opening the packaging." *Id.* at 88.

Medical care after an assault – When Mr. Mostafa engaged in a hunger strike in October 2019, he refused a medical assessment. ADX officers entered his cell and "proceeded to physically assault [him] for more than seven minutes, leaving him bleeding, dizzy, and disoriented." *Id.* at 83. Mr. Mostafa was "bleeding from his arm stump" and pressed the duress button for medical help but "no help was provided for approximately five more hours." *Id.* at 84. "After five hours, bandages were applied to [Mr. Mostafa's] bleeding stump." *Id.* The bandages "were not removed until three weeks later." *Id.*

Prosthetics – Mr. Mostafa requires prosthetics to manage his basic bodily functions. He arrived with "adequate prosthetics" from the United Kingdom but those were "lost or destroyed" in 2016. *Id.* at 72. He then "went almost nine months without any prosthetics at all, from September 13, 2016, through April of 2017." *Id.* His new prosthetics "are made of a material that causes [his] arm stumps to become inflamed and swell," "aren't waterproof," and "don't have adjustable holding fingers" that "allow different pressures to be applied, or allow different contact surfaces on the fingers." *Id.*

Letters from Mr. Mostafa's lawyers "requesting certain items to accommodate [his] disability and mitigate his injuries[] have gone unanswered." *Id.* at 90.

Occupational therapist – ADX official Follows refused Mr. Mostafa's request "for his own independent occupational therapist to make an assessment." *Id*.

Foot care – Mr. Mostafa "is unable to trim his toenails, and has cut himself and developed infections of his toes." *Id.* at 74. ADX officials ignored his requests for assistance with his toenails and infections for 9.5 months. Mr. Mostafa "was told by [ADX medical staff] Chorosevic, Sterett and Follows that his toenails would not be trimmed until he ended the hunger strike." *Id.* at 85. In January 2020, nurse Hudelston "used a tool from his pocket to crudely cut them, causing bleeding and some pain." *Id.* at 85.

Mask – ADX Officers "fail[ed] to provide [Mr. Mostafa] with a mask when interacting face to face with prison staff." *Id.* at 89.

Prescription medications – "Defendants have at times failed to renew [Mr. Mostafa's] prescription medications on time." *Id.*

Mr. Mostafa also alleged that unnamed ADX officials have demonstrated "indifference to his suffering" with statements like: "This is not a hospital"; "Why did you cut your hands?"; and "his injuries and bleeding are not 'life threatening.'" *Id* at 91.

B. *Procedural History*

1. Complaint

Mr. Mostafa, proceeding pro se, filed his first complaint in March 2020. Represented by counsel in July 2022, he filed his Fourth Amended Complaint

("Complaint"), the operative one for this case. He asserted 11 claims—seven constitutional claims; one claim under the Religious Freedom Restoration Act of 1993 ("RFRA"), 42 U.S.C. § 2000bb; two claims under the Rehabilitation Act of 1973, 29 U.S.C. § 794(a); and one claim under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706.

He sued several federal officials by name in their official capacities: the Attorney General, the FBI director, the BOP Director, and the ADX Warden. He asserted eight claims against them:

> Claim 1 – RFRA violation alleging (a) restrictions on group prayer; (b) failure to provide halal food in an accessible form; (c) denial of feast meals; and (d) failure to provide accessible facilities for ritual washing.
>
> Claim 2 – First Amendment free exercise violation based on Claim 1's allegations.
>
> Claim 3 – Fifth Amendment equal protection violation for disparate treatment of Muslims based on the allegations in Claims 1 and 2.
>
> Claim 4 – First Amendment free speech and association violations based on restricted (a) communications with foreign attorneys; (b) communications with family; and (c) visits from medical professionals.
>
> Claim 5 – Rehabilitation Act violation based on failure to provide reasonable accommodation for his amputated arms—specifically, inadequate prosthetics, food packaging, personal hygiene facilities, and bedding.
>
> Claim 6 – Rehabilitation Act violation based on failure to provide adequate facilities, including accommodations for his toilet, shower, sink, and table.
>
> Claim 10 – APA violation based on his placement at ADX and "all of the . . . other claims." *Id.* at 92-94.
>
> Claim 11 – First Amendment violation for denial of access to courts and counsel based on (a) seizure and review of his legal communications; (b) failure to provide access to a law library, "disabled pen," or computer; and (c) denial of contact with counsel. *Id.* at 94-97.

Mr. Mostafa asserted three Eighth Amendment claims against various ADX officials in their individual capacities:

> Claim 7 – excessive force against ADX lieutenants Garduno and Armijo; officers Parry, Averit, and Edwards; and medical staff William, Hudelston, and Sterett, alleging they either physically assaulted him in October 2019, or failed to prevent or report the assault.
>
> Claim 8 – deliberate indifference to medical needs against ADX officers Loewe and Norjano and medical staff Follows, Hudelston, Sterett, and Chorosevic, alleging failure to provide adequate dental care, his medical diet, adequate podiatric care, adequate prosthetics, medications, masks, and an independent occupational therapist.
>
> Claim 9 – deliberate indifference to medical needs against ADX nurse William, alleging failure to provide in October 2018 treatment for his bleeding and injured stumps.

The Complaint requested "injunctive relief, removing the restrictions on his practice of religion and association with others inside and outside of prison, and providing prosthetics and facilities that reasonably accommodate his disability"; compensatory and punitive damages; and attorney fees. *Id.* at 97.

2. Dismissals and Summary Judgment

The district court dismissed most of Mr. Mostafa's claims on the Defendants' (1) motion to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), (2) their accompanying motion for partial summary judgment, and (3) their later motion for summary judgment. Mr. Mostafa then voluntarily dismissed with prejudice the remaining claims.[2]

[2] Mr. Mostafa initially stipulated to dismissal of his remaining claims—Claim 9 and narrow parts of Claims 1 and 2—without prejudice. After appealing, and in response

The court dismissed by summary judgment most of Claims 1, 2, and 3—his RFRA, First Amendment, and Fifth Amendment claims challenging restrictions on religious exercise—as moot or for failure to exhaust. It resolved two narrow portions of the religious exercise claims differently. First, it dismissed Mr. Mostafa's Fifth Amendment equal protection claim alleging disparate treatment in group prayer opportunities for failure to state a claim because he failed to allege "that he was 'treated differently from others who were similarly situated to [him].'" Aplt. App. at 144 (quoting *Tenison v. Byrd*, 826 F. App'x 682, 688 (10th Cir. 2020) (unpublished)). Second, the court denied summary judgment on Mr. Mostafa's RFRA and First Amendment claims that he lacked adequate facilities to conduct "ritual washing" in his cell. *Id.* at 242-43, 249. Mr. Mostafa voluntarily dismissed with prejudice the remaining portions of Claims 1, 2, and 3. *Id.* at 43, 261.

On summary judgment, the court also dismissed for failure to exhaust Mr. Mostafa's First Amendment free speech and association claim (Claim 4), Rehabilitation Act claims (Claims 5 and 6), portions of his Eighth Amendment deliberate indifference to medical needs claim (Claim 8), and his First Amendment access to courts and legal counsel claim (Claim 11).[3] On the Eighth Amendment deliberate indifference

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to this Court's order, Mr. Mostafa returned to district court to stipulate to dismissal with prejudice. The district court entered an amended final judgment.

[3] Mr. Mostafa's First Amendment claim based on restricted communications with a single attorney, Jules Lobel, was exhausted but the parties stipulated to dismissal of that claim.

claim, the district court dismissed by summary judgment the portion of the claim alleging denial of a chosen occupational therapist and denial of a mask. The court also granted Defendants Chorosevic and Follows absolute immunity on Claim 8 as "commissioned officers in the United States Public Health Service." *Id.* at 156. Mr. Mostafa separately stipulated to dismissal of his Eighth Amendment claim against ADX Nurse William (Claim 9) with prejudice.

Finally, the court held that Mr. Mostafa could not sue for excessive force or deliberate indifference to medical needs under *Bivens* and therefore dismissed Claims 7 and 8 for failure to state a claim. It also dismissed by summary judgment APA Claim 10, which challenged his placement at ADX-Florence, as time-barred. The court did not address Mr. Mostafa's suggestion for leave to amend the complaint or his challenge to the cost of deposition transcript fees. We will provide additional procedural background on these matters later in the opinion.

The court denied Mr. Mostafa's motions for reconsideration and to correct the judgment under Federal Rules of Civil Procedure 59(e) and 60(a).

II. DISCUSSION

On appeal, Mr. Mostafa argues the district court erred by (1) refusing to extend his APA Claim 10 to include his constitutional claims, (2) dismissing his Eighth Amendment deliberate indifference to medical needs Claim 8 under *Bivens*, (3) denying him leave to amend his complaint, and (4) failing to review the deposition transcript fees for reasonableness. We affirm the district court on all four issues.

On the first two issues, we review de novo both a district court's dismissal for failure to state a claim and a grant of summary judgment. *Cuervo v. Sorenson*, 112 F.4th 1307, 1312 (10th Cir. 2024); *Cillo v. City of Greenwood Village*, 739 F.3d 451, 461 (10th Cir. 2013). On the remaining issues, we review for abuse of discretion. *Castanon v. Cathey*, 976 F.3d 1136, 1144 (10th Cir. 2020) (leave to amend); *In re Williams Sec. Litig.-WCG Subclass*, 558 F.3d 1144, 1148 (10th Cir. 2009) (cost award).

A. *APA Review of the Constitutional Claims*

Mr. Mostafa argues that he "properly pled his Constitutional claims" under the APA. Aplt. Br. at 14.[4] He did not.

1. APA Review Issue Limited to Eighth Amendment Claim 8 and APA Claim 10

Mr. Mostafa seems to argue the district court erred in failing to review six of his constitutional claims under the APA—Claims 2-4 and 7-9.[5] He also contends that his APA Claim 10 encompassed his constitutional claims and that the district court erred in construing that claim as solely challenging his placement in ADX. *Id.* at 14-16.

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[4] Mr. Mostafa cites *Thomas v. United States*, 41 F.4th 1243, 1245 (10th Cir. 2022), for his APA argument. *See* Aplt. Reply Br. at 4-5. The case at 41 F.4th 1243 is *Frey v. Town of Jackson*.

[5] In his brief, Mr. Mostafa states his Complaint "listed six different violations of his rights under the U.S. Constitution" and consistently refers to "six constitutional claims." Aplt. Br. at 20. In a footnote accompanying this assertion, he identifies Claims 2, 3, 4, 7, 8 and 9 as his constitutional claims. *Id.* at 20 n.5. The Complaint listed seven constitutional claims. For unknown reasons, on appeal, he omits or overlooks Claim 11, which alleged "[v]iolation of First Amendment, for denial of access to the court and to legal counsel" against the official capacity defendants. Aplt. App. at 94.

Mr. Mostafa fails to challenge the district court's dismissal of his constitutional Claims 2, 3, 4, and 9, and even if he did, the district court dismissed these claims on grounds independent from the APA, so reviewing under the APA would not change whether the district court correctly disposed of these claims. *See Adams v. Fed. Aviation Admin.*, 168 F.4th 1271, 1284 (10th Cir. 2026) ("[E]xhaustion of APA claims is generally required." (quotations omitted)); *Prison Legal News v. Fed. Bureau of Prisons*, 944 F.3d 868, 886 (10th Cir. 2019) ("Because PLN's APA claim is based on the same allegations as its constitutional claims, the APA claim is similarly moot."); *Robertson v. United States*, 145 F.3d 1346 (10th Cir. 1998) (unpublished table decision) (affirming dismissal of "plaintiff's constitutionally based request under the APA" because his allegations failed to "establish a constitutional violation" (quotations omitted)).

As to Claim 7, Mr. Mostafa concedes that *Goldey v. Fields*, 606 U.S. 942 (2025), "forecloses" this Eighth Amendment claim for excessive force. Aplt. Reply Br. at 12.[6] As discussed below, he challenges the dismissal of his Eighth Amendment Claim 8, which alleged deliberate indifference to medical needs, for failure to state a claim under *Bivens*. Thus, and as further explained below, his APA arguments apply only to his Eighth Amendment Claim 8 and his APA Claim 10.

[6] Apart from its excessive force allegations, Claim 7 included averments that sound more like allegations of deliberate indifference to medical needs, such as the failure to bandage Mr. Mostafa's bleeding arm stump for five hours. If Mr. Mostafa's *Goldey* concession does not include these allegations, we consider them as effectively part of Claim 8—deliberate indifference to medical needs.

Mr. Mostafa's appeal on this issue is therefore limited to whether the district court erred in dismissing Mr. Mostafa's Eighth Amendment Claim 8 without considering reviewability under the APA, and whether the district court erred in construing Mr. Mostafa's APA Claim 10 as solely challenging his placement at ADX.

2. Eighth Amendment Claim 8

Mr. Mostafa's argument that his Eighth Amendment Claim 8 included a request for APA review fails under basic APA requirements.

a. No final agency action

Mr. Mostafa failed to state an Eighth Amendment claim under the APA because the Complaint does not allege any final agency action in Claim 8. *See Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 808 (2024). Finality "is a necessary . . . ground for stating a claim under the APA." *Id.* (quotations omitted).

APA § 704 permits judicial review of "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704; *see also Citizens for Const. Integrity v. United States*, 70 F.4th 1289, 1311 (10th Cir. 2023). Agency action is final when the "decisionmaker has arrived at a definitive position on the issue that inflicts an actual, concrete injury." *Darby v. Cisneros*, 509 U.S. 137, 144 (1993) (quotations omitted). The agency action must (1) "mark the consummation of the agency's decisionmaking process" such that the action is not "tentative or interlocutory" and (2) "be one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1977) (citations and quotations omitted); *Custodia Bank, Inc. v. Fed. Rsrv. Bd. of Governors*, 157 F.4th 1235,

1249 (10th Cir. 2025). "Plaintiffs have the burden of identifying specific federal conduct and explaining how it is 'final agency action' within the meaning of [the APA]." *Colo. Farm Bureau Fed'n v. U.S. Forest Serv.*, 220 F.3d 1171, 1173 (10th Cir. 2000).

Mr. Mostafa fails to identify any final agency action in Claim 8. He generally alleged that Defendants failed to respond to requests for medical treatment. Aplt. App. at 90 (alleging letters "requesting certain items to accommodate Plaintiff's disability and mitigate his injuries, have gone unanswered"). This allegation does not reflect a "consummation of the agency's decisionmaking process." *Bennett*, 520 U.S. at 178 (quotations omitted).

b. Failure to sue an agency or an official capacity defendant

Mr. Mostafa's APA argument also fails because he asserted his Eighth Amendment Claim 8 against individual federal officers in their individual capacities, not the BOP as an agency or any federal officers in their official capacities. Mr. Mostafa's "Eighth Cause of Action" asserts a "Violation of Eighth Amendment for deliberate indifference to medical needs, asserted against Defendants Follows, Hudelston, Sterett, Loewe, Chorosevic and Narjano, in their individual capacities." Aplt. App. at 86.

Claim 8 thus seeks to impose personal liability on individual federal officials. The APA does not afford such relief. The APA waives sovereign immunity for suits "seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority." 5 U.S.C. § 702. Individual officers acting in their individual capacities are "not an agency subject to suit under the APA." *See Hanson v. Wyatt*, 552 F.3d 1148,

1156 (10th Cir. 2008) ("A suit against Maj. Gen. Wyatt in his state capacity, however, cannot be brought under the APA" because "Maj. Gen. Wyatt, acting in his state capacity, is not an 'authority of the Government of the United States,' 5 U.S.C. § 551(1), and hence not an agency subject to suit under the APA."). And, in contrast to official capacity suits, a suit against federal officials in their individual capacities is not an action "essentially against the United States." *Stafford v. Briggs*, 444 U.S. 527, 542 (1980).

Mr. Mostafa failed to name an agency or any federal officials acting in their official capacities as defendants in Claim 8.[7] Because Claim 8 seeks to impose personal liability on individual officers, *Bivens* would be the proper cause of action to pursue, which Mr. Mostafa did. *See, e.g.*, *Pahls v. Thomas*, 718 F.3d 1210, 1225 (10th Cir. 2013) ("§ 1983 and *Bivens* are vehicles for imposing personal liability on government officials.").

c. Injunctive relief

Mr. Mostafa's attempt to salvage his APA argument based on his requests for injunctive relief in his prayer for relief is unavailing. The Complaint does not tie his requests to any particular claims. And even if it did, this would not remedy the absence of an alleged final agency action in Claim 8. Also, the APA is not the only statute invoked in Mr. Mostafa's Complaint that authorizes injunctive relief. Injunctive relief is also available under RFRA and the Rehabilitation Act. *See, e.g.*, *Alexander v. Sandoval*,

[7] *See also Elkins v. Elenz*, 516 F. App'x 825, 829 (11th Cir. 2013) (unpublished) (holding plaintiff's "APA claims must fail" because he "did not name a defendant agency in his complaint . . . nor has he identified an agency action that has caused him harm").

532 U.S. 275, 280 (2001) (Rehabilitation Act); *Ajaj v. Fed. Bureau of Prisons*, 25 F.4th 805, 808 (10th Cir. 2022) (RFRA). So a mere prayer for injunctive relief does not provide notice to the Defendants that Mr. Mostafa is pursuing his Eighth Amendment Claims under the APA. *See* Fed. R. Civ. P. 8(a)(2).

3. APA Claim 10 Is Limited to the ADX Placement

The district court concluded that the six-year statute of limitations, 28 U.S.C. § 2401(a), barred Mr. Mostafa's APA claim, which challenged Mr. Mostafa's placement at ADX. But Mr. Mostafa argued that, in addition to challenging his ADX placement, his APA claim also "incorporates by reference all of the previous claims, and makes an additional claim: that they are all reviewable procedurally as well as on the merits." Aplt. App. at 124-25 (quotations omitted).

The district court rejected Mr. Mostafa's "recharacterization of claim ten." *Id.* at 125. It concluded that "[t]he plain language of Mr. Mostafa's tenth claim focuses on his placement at ADX," noting Claim 10 states "that the '*placement of the Plaintiff in the ADX* was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'" *Id.* (quoting Aplt. App. at 93). The court also noted that "Mr. Mostafa provides no legal authority supporting the proposition that his other claims are reviewable under APA." *Id.*

We agree with the district court. The Complaint mentions the APA only in Claim 10, and the district court properly limited that claim to challenging his placement at ADX. Claim 10 states in relevant part:

> The placement of the Plaintiff in the ADX was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to the constitutional rights set forth as separate claims in this Complaint; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; without observance of procedure required by law; unsupported by substantial evidence on the record; or unwarranted by the facts to the extent that the facts are subject to trial *de novo* by the reviewing court. These are the standards of review enumerated in 5 U.S. Code § 706, which defines the Scope of Review of the Administrative Procedure Act.

Aplt. App. at 93.

As noted, Mr. Mostafa needed to identify a "final agency action" to obtain review under the APA. *See, e.g.*, *Corner Post*, 603 U.S. at 808. The only final agency action identified in Claim 10 is Mr. Mostafa's placement at ADX. His general reference to "all of the Plaintiff's other claims," Aplt. App. at 93, what the district court called "shotgun pleading," *id.* at 189, fails to "identify[] specific federal conduct and explain[] how it is 'final agency action' within the meaning of [the APA]." *Colo. Farm Bureau*, 220 F.3d at 1173.

* * * *

In sum, Mr. Mostafa's APA argument is limited to Claims 8 and 10. He failed to allege a final agency action subject to review under the APA in Claim 8, he failed to sue an agency or an official capacity defendant in Claim 8, and the only final agency action in Claim 10 was his placement in ADX. Claim 10 may not simply incorporate by reference his constitutional claims into his APA claim.

B. *Dismissal of Claim 8 for Failure to State a Bivens Action*

The Eighth Amendment Claim 8 for deliberate indifference to medical needs names certain Defendants in their individual capacities, but it survives only if it is cognizable under *Bivens*. Because it is not, we reject Mr. Mostafa's argument that the district court erred in holding he failed to state a *Bivens* action.

1. Legal Background

In *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), the Supreme Court "created a claim for damages that allowed the plaintiff to seek recovery from federal agents who had allegedly violated his Fourth Amendment rights by entering his home, placing him in manacles, and threatening his family." *Silva v. United States*, 45 F.4th 1134, 1138 (10th Cir. 2022). *Bivens* claims are available only against federal officers in their individual capacities. *See Egbert v. Boule*, 596 U.S. 482, 498 (2022); *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 72 (2001).

The Court has since effectively limited *Bivens* to two other "causes of action under the Constitution—first, for a former congressional staffer's Fifth Amendment sex-discrimination claim, *see Davis v. Passman*, 442 U.S. 228 (1979); and second, for a federal prisoner's inadequate-care claim under the Eighth Amendment, *see Carlson v. Green*, 446 U.S. 14 (1980)." *Egbert*, 596 U.S. at 490-91. After these two cases, "the arguments for recognizing implied causes of action for damages began to lose their force." *Ziglar v. Abbasi*, 582 U.S. 120, 132 (2017). Indeed, the Supreme Court has not done so since then.

Egbert described a two-step framework to determine whether a plaintiff states a valid *Bivens* claim. First, the court must ask whether the claim presents "a new *Bivens* context—*i.e.*, is it meaningfully different from the three cases in which the Court has implied a damages action"? *Egbert*, 596 U.S. at 492 (citation and quotations omitted). Second, if it does, then "a *Bivens* remedy is unavailable if there are special factors indicating that the Judiciary is at least arguably less equipped than Congress to weigh the costs and benefits of allowing a damages action to proceed." *Id.* (quotations omitted).

2. Additional Procedural Background

The district court granted the Defendants' motion to dismiss Mr. Mostafa's Eighth Amendment *Bivens* claims because (1) they arise in a new *Bivens* context and (2) the BOP's Administrative Remedy Program ("ARP") provides an available alternative remedy. As previously noted, Mr. Mostafa concedes that *Goldey v. Fields*, 606 U.S. 942 (2025), "forecloses" his Eighth Amendment claim for excessive force in Claim 7. Aplt. Reply Br. at 12. So we focus on Claim 8.

The district court concluded that Mr. Mostafa's deliberate indifference to medical needs claim arose "in a new context from *Carlson*." Aplt. App. at 157. It said that *Carlson,* which recognized a *Bivens* action for deliberate indifference to medical needs, involved an "extreme circumstance . . . where the denial of medical care resulted in the plaintiff's death," whereas "Mr. Mostafa's allegations concern health maintenance issues of inadequate dental care, food packaging, a specific diet, toenail trimmings, and prescription medication." *Id.* at 158.

The district court also rejected the deliberate indifference *Bivens* claim because "the government has provided an alternative remedy, BOP's Administrative Remedy Program." *Id.* at 158-59.

3. Analysis

Mr. Mostafa principally analogizes to *Carlson* to support his deliberate indifference to medical needs claim. But our precedents foreclose this argument.

a. New Bivens *context*

First, his claim arises in a new *Bivens* context. "A claim may arise in a new context even if it is based on the same constitutional provision as a claim in a case in which a damages remedy was previously recognized." *Hernandez v. Mesa*, 589 U.S. 93, 103 (2020). In *Ziglar*, 582 U.S. at 147, the Supreme Court warned that even cases with "significant parallels to one of the Court's previous *Bivens* cases" may be "extension[s]."

Our decision in *Rowland v. Matevousian*, 121 F.4th 1237 (10th Cir. 2024), controls. There, we held the plaintiff's case, even though it alleged the same medical indifference violation as in *Carlson*, arose in a new *Bivens* context. We said the claim "contain[ed] more than 'small' differences from *Carlson* in terms of 'the generality or specificity of the official action.'" *Id.* at 1243 (quoting *Ziglar*, 582 U.S. at 140). To guide our analysis, we first identified *Carlson*'s factual allegations:

- Prison officials acted *against* the doctor's orders by keeping the plaintiff in a medical facility that was known to be "gross[ly] inadequate."
- The prisoner did not receive "competent medical attention for some eight hours after he had an asthmatic attack."

- The prisoner was "[a]dministered contra-indicated drugs which made [the prisoner's] attack more severe."
- Prison officials attempted to use a respirator known to be inoperative which further impeded the prisoner's breathing.
- The prisoner died as a result.

Id. (quoting *Carlson*, 446 U.S. at 16 n.1) (citation modified).

We found that Mr. Rowland's allegations were "significantly different" because "the prison officials did not act contrary to the doctor's recommendations for treating Mr. Rowland's hernia" and "the prison officials did not (1) give 'contra-indicated drugs' to Mr. Rowland, (2) knowingly keep him in a medical facility that was 'grossly inadequate' and contrary to the doctor's orders, or (3) prescribe or use a medical instrument that was 'known to be inoperative.'" *Id.*[8]

As in *Rowland*, Mr. Mostafa's allegations were significantly different from those in *Carlson*. Mr. Mostafa alleged poor dental care, poor podiatric care, denial of his medical diet, inadequate prosthetics, failure to provide a mask, and untimely renewal of prescription medications. Although these conditions are serious and concerning, unlike

[8] The Fourth Circuit reached a similar conclusion in an even more analogous case, holding that the plaintiff's "claims for inadequate medical treatment present[ed] a materially different context than the inadequate medical treatment claim presented in *Carlson*." *Spivey v. Breckon*, 173 F.4th 174, 179 (4th Cir. 2026). The plaintiff "alleged a temporary tooth condition—decay and inflammation—the treatment for which was delayed for lack of staff but which was ultimately provided"; "rectal bleeding, which was investigated with a medical test, the result of which was that no further treatment was provided"; and "rejection of his request for participation in a psychology class to address depression." *Id.* The court held the allegations were not "even close to the severity of those in *Carlson*" where "medical treatment recommended by doctors was rejected and improper medicine was administered." *Id.* (citing *Carlson*, 446 U.S. at 16 n.1).

in *Carlson*, prison officials did not act against doctors' orders, deny Mr. Mostafa all medical treatment, or worsen his conditions. And unlike the complete denial of care and mistreatment in *Carlson* that led to Mr. Carlson's death, Mr. Mostafa alleged infrequent treatment or treatment that fell short. He did not allege defendants failed to provide any care or that the medical treatments "further impeded" his medical conditions. *Rowland*, 121 F.4th at 1243.

"[T]hese differences are more than 'small,' and would require, at bare minimum, an impermissible 'modest extension' of *Bivens*." *Rowland*, 121 F.4th at 1243 (quoting *Ziglar*, 582 U.S. at 147). Mr. Mostafa's claim thus presents a new *Bivens* context.

b. Special factors

Because Mr. Mostafa's claim "arises in a new context," we must ask "if there are 'special factors' indicating that the Judiciary is at least arguably less equipped than Congress to 'weigh the costs and benefits of allowing a damages action to proceed.'" *Egbert*, 596 U.S. at 492 (quoting *Ziglar*, 582 U.S. at 136). "If there are alternative remedial structures in place, that alone, like any special factor, is reason enough to limit the power of the Judiciary to infer a new *Bivens* cause of action." *Id.* at 493 (quotations omitted).

In *Silva*, we held "the BOP Administrative Remedy Program is an adequate means through which allegedly unconstitutional actions . . . can be brought to the attention of the BOP and prevented from recurring." 45 F.4th at 1141 (quotations omitted). Based on *Egbert*, we concluded "the availability of the BOP's Administrative Remedy Program offers an independently sufficient ground to foreclose Plaintiff's *Bivens* claim." *Id.*; *see*

also Rowland, 121 F.4th at 1243-44 ("The second step of the *Bivens* inquiry dooms Mr. Rowland's case" because "a remedial scheme already exists to address his complaint," "the BOP's Administrative Remedial Program."). So too here. As in *Silva*, Mr. Mostafa's ARP alternative remedy is a special factor foreclosing this claim.

C. *Denial of Leave to Amend the Complaint*

Mr. Mostafa argues the district court "abused its discretion by not granting [him] leave to amend his complaint, if his six constitutional claims had to be re-pled six more times as APA claims." Aplt. Br. at 20.

Federal Rule of Civil Procedure 15(a)(2) instructs courts to "freely give leave when justice so requires." But "normally a court need not grant leave to amend when a party fails to file a formal motion." *Calderon v. Kan. Dep't of Soc. & Rehab. Servs.*, 181 F.3d 1180, 1186 (10th Cir. 1999).

In *Calderon*, we explained that "a request for leave to amend must give adequate notice to the district court and to the opposing party of the basis of the proposed amendment before the court is required to recognize that a motion for leave to amend is before it." *Id.* at 1186-87. There, a "single sentence, lacking a statement for the grounds for amendment and dangling at the end of [the plaintiff's] memorandum, did not rise to the level of a motion for leave to amend." *Id.* at 1187. We concluded, "[b]ecause a motion for leave to amend was never properly before it, the district court did not abuse its discretion in failing to address [the] request for leave to cure deficiencies in [the plaintiff's] pleadings." *Id.*; *see also Lichfield v. Kubler*, 183 F.4th 1258, 1270 (10th Cir. 2026) ("Because he did not move for leave to amend in the manner required, the district

court did not abuse its discretion in failing to address [his] request." (quotations omitted)); *Glenn v. First Nat'l Bank in Grand Junction*, 868 F.2d 368, 371 (10th Cir. 1989) ("Under the facts of this case, we hold that Appellant did not move the court for leave to amend the complaint and therefore the district judge committed no error in not ruling thereon.").

The same reasoning applies here. Mr. Mostafa did not file a motion requesting leave to amend his Complaint in light of the district court's rulings. Instead, he included a single sentence in his reply brief on his motion for reconsideration stating, "One remedy for . . . misreading the Plaintiff's complaint would be to grant leave to amend." Aplee. App., Vol. III at 666. Because Mr. Mostafa failed to provide adequate notice to the court and defendants of his request for leave to amend, the district court did not abuse its discretion in failing to address the suggestion at the end of Mr. Mostafa's reply brief on his motion for reconsideration.

D. *Deposition Transcript Fees*

Finally, we address Mr. Mostafa's challenge to the deposition transcript fees.

1. Additional Procedural Background

The district court entered a standing administrative order ("Administrative Order") under 28 U.S.C. § 753(f), prescribing the maximum fees that court reporters could charge the parties. Aplee. App. Vol III at 673. The Schedule of Transcript Fees attached to the Administrative Order set the maximum rate at $1 per page.

In September 2024, the Defendants deposed Jay Sciortino, Mr. Mostafa's expert witness. Mr. Mostafa requested a copy of the deposition transcript from the reporter

Javernick & Stenstrom, LLC. Javernick charged $3.35 per page and other administrative fees.

Challenging Javernick's rates for exceeding the Administrative Order's maximum rate, Mr. Mostafa moved in district court for an order that the Administrative Order's maximum rates apply to the parties' hired deposition reporters, not just the court reporters. The district court referred the motion to a magistrate judge, who denied the motion. The magistrate judge interpreted the Administrative Order's "plain text" as exercising 28 U.S.C. § 753(f) authority only over "official court reporter[s]" who are "the federal court's full-time employee[s]," not "private reporters or out-of-court deposition services." Aplt. App. at 205 (quotations omitted).

Mr. Mostafa did not object. Under Rule 54(d)(1), the district court said Mr. Mostafa must pay the Defendants' costs, which include transcript costs.

2. Analysis

We have "adopted a firm waiver rule under which a party who fails to make a timely objection to the magistrate judge's findings and recommendations waives appellate review of both factual and legal questions." *Morales-Fernandez v. Immigr. & Naturalization Serv.,* 418 F.3d 1116, 1119 (10th Cir. 2005). Only two exceptions exist: "when (1) a *pro se* litigant has not been informed of the time period for objecting and the consequences of failing to object, or when (2) the interests of justice require review." *Id.* (quotations omitted). The first exception does not apply to counseled litigants, and the second exception "in counseled cases is a narrow one" that applies only in "rare

circumstance[s]." *Key Energy Res., Inc. v. Merrill* (*In re Key Energy, Inc.*), 230 F.3d 1197, 1200 (10th Cir. 2000) (quotations omitted).

Mr. Mostafa did not object in district court to the magistrate judge's ruling that the Administrative Order setting maximum rates applied only to in-court reporters, not privately hired deposition reporters. He has therefore waived the issue. *See Tilton v. Cap. Cities/ABC, Inc.*, 115 F.3d 1471, 1475 (10th Cir. 1997) (holding plaintiff-appellant waived challenge to "costs for the deposition exhibits . . . because [he] failed to raise it before the district court"). And neither exception to the firm-waiver rule applies. He was counseled, so the magistrate judge did not need to warn him about the consequences of failing to timely object, and this challenge does not present the rare circumstance excepting it from the firm-waiver rule.

Because we hold Mr. Mostafa waived the challenge to the deposition transcript fees, we do not address his arguments on the merits.

III. CONCLUSION

We affirm the district court's judgment.